



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF: )  
 ) U.S. EPA Docket No. 9-2005-08  
**Oahu Sugar Company, LLC.** )  
Respondent ) UNILATERAL ADMINISTRATIVE  
 ) ORDER FOR THE PERFORMANCE  
 ) OF A REMOVAL ACTION  
Proceeding Under Section 106(a) )  
of the Comprehensive Environmental )  
Response, Compensation, and )  
Liability Act of 1980, )  
42 U.S.C. § 9606(a). )  
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**I. AUTHORITY**

This Unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Small Business Liability Relief and Brownfields Revitalization Act of 2002 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority has been duly redelegated to the Branch Chief, Superfund Division, EPA Region 9 ("Branch Chief"), by delegations dated September 29, 1997, and November 16, 2001.

## **II. PARTIES BOUND**

1. This Order shall apply to and be binding on the following: Oahu Sugar Company, LLC ("Oahu Sugar" ), a Delaware corporation. This Order shall be binding on Oahu Sugar ("Respondent"), and its agents, successors and assigns. No change in ownership or operational status will alter Respondent's obligations under this Order. Notwithstanding the terms of any contract or agreement, Respondent is responsible for compliance with this Order and for ensuring that its employees, contractors, and agents comply with this Order. Respondent shall provide a copy of this Order to all contractors, subcontractors, and consultants that are retained by Respondent to perform the work required by this Order within three (3) days after the Effective Date of this Order or within three (3) days of retaining their services, whichever is later.
2. Respondent may not convey any title, easement, or other interest it may have, in any property comprising the Site, as the term "Site" is defined below, without a provision permitting the continuous implementation of the provisions of this Order. If Respondent wishes to transfer any title, easement, or other interest it may have in any property comprising the Site, Respondent shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. In such case, Respondent shall advise EPA one (1) month in advance of any anticipated transfer of interest.

## **III. DEFINITIONS**

3. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below

are used in this Order, or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

“Day” shall mean a calendar day unless expressly stated otherwise. “Working day” shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 and by the Small Business Liability Relief and Brownfields Revitalization Act of 2002, 42 U.S.C. § 9601 et seq.

“Unilateral Order” or “Order” shall mean this Unilateral Administrative Order, EPA docket number UAO 9-2005-08, and all exhibits attached hereto. In the event of a conflict between this Order and any exhibit, this Order shall control.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Hawaii Department of Health” or “Hawaii DOH” shall mean the Hawaii pollution control agency or environmental protection agency and any successor departments or agencies of the State.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral.

“Response Action” shall be those specific work items Respondent is required to

perform at the Site pursuant to this Order, as set forth in Section IX of this Order.

“Respondent” shall mean Oahu Sugar Company, LLC (OSCO).

“Section” shall mean a portion of this Order identified by a Roman numeral, unless otherwise stated.

“Site” shall mean the former Oahu Sugar pesticide mixing plant, which is located on the Pearl Harbor Naval Complex Superfund Site. The OSCO Site is fenced and the area within the fence occupies approximately 3.5 acres. The OSCO Site is bounded by a former agricultural area on Waipio Peninsula and Walker Bay in West Loch Pearl Harbor to the west of the Site. The OSCO Site is geographically located at 21° 21' 44.7" north latitude and 157 ° 59' 23.7" west longitude, Waipio Peninsula, Waipahu, Hawaii.

“State” shall mean the State of Hawaii, and all of its political subdivisions, including the Hawaii Department of Health (“DOH”).

“United States” shall mean the United States of America.

#### **IV. FINDINGS OF FACT**

4. The Site is OSCO’s former pesticide mixing plant and occupies approximately 3.5 acres on the Waipio Peninsula near Waipahu, Oahu, Hawaii, within the Pearl Harbor Naval Complex Superfund Site. OSCO operated sugar cane fields and associated facilities in the area from approximately 1902 until the 1980's. OSCO used this Site for the storage, mixing and loading of pesticides and fertilizers. From around 1947 until approximately 1996, OSCO leased this Site and other land in this area from the United States Department of Defense, Department of the Navy, to grow sugarcane.
5. The 3.5 acres are adjacent to Walker Bay, off Pearl Harbor. An approximately 15- foot high cliff runs across the Site in an approximately north-south direction. OSCO had a

number of aboveground storage tanks (ASTs) along the top of the cliff. OSCO used the lower area to store, mix and load pesticides on crop dusting aircraft. An airstrip, quonset hut and a number of ASTs were formerly located in the lower area of the Site.

6. On May 20, 1997, the Hawaii Department of Health ("DOH") conducted surface soil sampling at and around the former pesticide mixing plant. The sampling results from the DOH effort indicated high concentrations of various dioxin congeners at the Site, including dioxin contamination as high as 1,530 parts per billion (ppb) for 2,3,7,8-tetrachlorodibenzo-para-dioxin (2,3,7,8 TCDD) toxicity equivalents ("TEQ").
7. Dioxin is a persistent, bioaccumulative and toxic pollutant that can build up in the food chain to levels harmful to human and ecosystem health. The TEQ is a method to describe total toxicity for dioxin congeners as if it were the most toxic dioxin, 2,3,7,8 TCDD. The method was developed by national and international workgroups culminating in the World Health Organization (WHO), with EPA participation, adopting the methodology. EPA applies the concept of toxic equivalency factors ("TEF") to facilitate the risk assessment of these compounds in specific mixtures. TEFs compare the potential toxicity of each dioxin-like compound comprising the mixture to the potency of 2,3,7,8-TCDD, the most toxic member of the group. The amount of each congener is multiplied by its TEF and the products are summed. The summed values yield a toxicity equivalence or TEQ, relative to 2,3,7,8 TCDD. In this manner, congeners in a mixture are normalized based on both concentration and potency relative to 2,3,7,8-TCDD. The summed value of congeners at the Site is expressed as 1,530 ppb TEQ.
8. The EPA Region 9 Preliminary Remediation Goal ("PRG") for dioxin is 0.016 ppb for industrial exposure and 0.0039 ppb for residential exposure. The EPA Office of Solid

Waste and Emergency Response ("OSWER") Directive 9200.4-26, *Approach for Addressing Dioxin in Soil at CERCLA and RCRA Sites*, April 13, 1998, recommends cleanup levels for dioxin at 1 ppb TEQ for residential exposure and 10 ppb TEQ for industrial exposure as a starting point.

9. Pentachlorophenol ("PCP") was also detected at the Site at levels between 8.4 -35 parts per million ("ppm"). Pentachlorophenol historically was widely used as a pesticide and wood preservative. EPA lists pentachlorophenol as a probable human carcinogen. The EPA PRG for pentachlorophenol in soil is 3 ppm for residential exposure and 9 ppm for industrial exposure. The federal Maximum Contaminant Level ("MCL") for PCP is 1 ppb.
10. In August 2002, BEI Environmental Services, on behalf of OSCO, conducted a remedial investigation and prepared a remedial investigation report for the former pesticide mixing area. The TEQ results of this soil sampling effort ranged from 10.55 ppb to 992 ppb for dioxin. PCP was detected in surface soils at levels between .037 ppm to 140 ppm.
11. The administrative record supporting this action is available for review at the EPA, Region 9 offices located at 75 Hawthorne Street, San Francisco, California.

#### **V. CONCLUSIONS OF LAW**

12. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
13. The Respondent, OSCO, is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
14. Oahu Sugar, the operator of the facility at the time of disposal of hazardous substances, is "liable" within meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(2), and is

subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

15. The contaminants found at the Site, as identified in Section IV of this Order, include "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
16. The conditions that existed and that currently exist at the OSCO Site, as described in Section IV of this Order, constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
17. The actual or threatened release of hazardous substances from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment, within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), which includes, but is not limited to the following:
  - a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; and
  - b. an actual or threat of release of hazardous substances, pollutants or contaminants in soils; and
  - c. high levels of hazardous substances or pollutants or pollutants in soils largely at or near the surface, that may migrate.

## **VI. DETERMINATIONS**

Based on the Findings of Fact and the Conclusions of Law stated herein, the Branch Chief has made the following determinations:

18. That an actual or threatened release of hazardous substances from the Site presents an imminent and substantial endangerment to the public health or welfare or the

environment.

19. That conditions at the Site constitute a threat to public health or welfare or the environment based on consideration of the factors stated in the NCP at 40 C.F.R. § 300.415(b), and that the actions required by this Order are necessary to protect the public health or welfare or the environment.
20. That the actions required by this Order, if properly performed, will be consistent with the NCP, and are appropriate to protect the public health or welfare or the environment.

#### **VII. NOTICE TO THE STATE**

21. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA has notified the State of the issuance of this Order by providing a copy of this Order.

#### **VIII. EFFECTIVE DATE**

22. This Order is deemed effective on receipt (the "Effective Date"), unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second (2nd) day following the day of such conference unless modified in writing by EPA. All times for performance of ordered activities shall be computed from this effective date.

#### **IX. ORDER**

23. Based on the Findings of Fact, Conclusions of Law, and Determinations, EPA hereby orders Respondent to perform the specific work set forth below under the direction of the EPA Remedial Project Manager ("RPM"), as designated in Section XII, and to comply with all requirements of this Order until EPA provides notice that the Response Action is complete.
24. Work to be Performed. The Respondent shall perform the following tasks, which shall



constitute the Response Action under this Order:

- a. Respondent shall perform the work and make submittals and certifications as set forth below and in Attachment A within the time schedules specified in this Section and in Attachment A. Attachment A is an enforceable part of this Order.
- b. Respondent shall submit monthly progress reports ("Progress Reports") to EPA. The first such Progress Report shall be due by the fifteenth (15<sup>th</sup>) day following the end of the first calendar month after the Effective Date (Section VIII) of this Order, and by the 15<sup>th</sup> day of each month thereafter until EPA notifies Respondent that the Response Action is complete.
- c. Within fifteen (15) days after the Effective Date, Respondent shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.
- d. Respondent shall notify the EPA RPM at least forty-eight (48) hours prior to commencement of any on-Site work, and at least seventy-two (72) hours prior to disposal or other disposition of hazardous substances or wastes.
- e. All sampling and analyses performed pursuant to this Order shall conform to EPA

direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

1. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.
2. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 15 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the

right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

- f. Within thirty (30) days after completion of all actions required under this Order, the Respondent shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Order. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP. The Final Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with this Order, a listing of quantities and types of materials removed off-site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated (e.g., manifests, invoices, bills, contracts, and permits). In addition, the Respondent shall certify that the Final Report is complete and accurate to the best of its collective knowledge.
25. Effect of Noncompliance with Work Performance and Schedule. Except as otherwise stated in this Order, and within EPA's sole discretion, any noncompliance with the actions to be performed or the schedules established as set forth in this Order and Attachment A shall be considered a violation of this Order.
26. Notices and Submissions. All documents, including technical reports, and other correspondence to be submitted by the Respondent pursuant to requirements of this

Order, shall be sent by overnight mail to the following addressee, or to such other addressees as EPA hereafter designates in writing, and shall be deemed submitted on the date received by EPA.

Lewis Mitani, Remedial Project Manager  
US Environmental Protection Agency  
75 Hawthorne Street, Mail Code SFD-8-3  
San Francisco, CA 94105

Respondent shall submit two (2) copies of each document to EPA.

27. Approval of Submissions. EPA shall review, comment on, and approve or disapprove each plan, report, or other deliverable submitted by Respondent pursuant to the requirements of this Order and Attachment A. All EPA comments on draft deliverables shall be incorporated by the Respondent. EPA shall notify the Respondent in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, EPA shall specify the reasons for such disapproval, EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by EPA, EPA shall first notify the Respondent of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Order, or may conduct the remaining work required by this Order.
28. For purposes of this Order, EPA's authorized representatives may include, but not be limited to, consultants and contractors hired by EPA to oversee the activities required by this Order.
29. Access to Property and Information. Respondent shall permit EPA and its authorized representatives, including the State, to have access at all times to the Site to monitor any

activity conducted pursuant to this Order and to conduct such tests or investigations as EPA deems necessary. Nothing in this Order shall be deemed a limit on EPA's authority under federal law to gain access to the Site.

- a. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by the Respondent, the Respondent shall, commencing on the Effective Date, provide EPA the State, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.
- b. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall, within three (3) days after the Effective Date of this Order, obtain all necessary access for: EPA, its contractors, oversight officials, or other authorized representatives; state or tribal oversight officials and state or tribal contractors; and Respondent and its authorized representatives. Respondent shall immediately notify EPA if after using its best efforts Respondent is unable to obtain such access agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XIII (Reimbursement of Response Costs).

- c. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.
- d. Respondent shall provide to EPA upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
- e. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

- f. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.
- g. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

30. Record Retention, Documentation, Availability of Information

- a. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XIX (Termination and Satisfaction), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after

Respondent's receipt of EPA's notification pursuant to Section XIX (Termination and Satisfaction), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

- b. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.
- c. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the



Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. §6927.

31. Off-site Shipments of Waste Material.

- a. Respondent shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the EPA RPM. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.
  1. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
  2. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 31(a) and 31(b) of this Section as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

- b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.
32. Compliance with Other Laws. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to EPA approval.
33. Emergency Response and Notification of Releases
- a. If any incident or change in site conditions occurs during the actions conducted pursuant to this Order, which causes or threatens to cause an additional release of hazardous substances from the OSCO Site or an endangerment to the public health, welfare, or the environment, Respondent shall immediately take all appropriate action in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall take these

actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan. Respondent also shall immediately notify the RPM or, in the event of his unavailability, shall notify the alternate RPM designated in this Order. If neither the RPM nor alternate RPM is available, Respondent shall notify the EPA Emergency Response Unit, Region 9, of the incident or site conditions, by telephone at (415) 947-4400.

- b. If Respondent fails to respond, EPA may respond to the release or endangerment, and Respondent shall reimburse EPA for all costs and attorneys' fees incurred responding to the threat or endangerment. Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIII (Reimbursement of Response Costs).
- c. In addition, in the event of any release of a hazardous substance from the OSCO Site, Respondent shall immediately notify EPA, Region IX at telephone number (800) 300-2193 and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the recurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103(c) and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §11001 et seq.
- d. Nothing in the preceding Paragraphs shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human

health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

34. Notification of Unanticipated or Changed Circumstances

- a. In the event of unanticipated or changed circumstances at the OSCO Site, Respondent shall notify the EPA RPM by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than three (3) days after discovery of the unanticipated or changed circumstances.
- b. The Branch Chief may determine that, in addition to tasks addressed in an approved work plan or otherwise addressed herein, additional work may be required to address the unanticipated or changed circumstances that, if unaddressed, will result in an actual or threatened endangerment to health or the environment. Respondent shall implement such additional work that the Branch Chief identifies if such work is related to the OSCO Site or any releases therefrom. Respondent shall complete the additional work that the Branch Chief determines will remove the endangerment according to the standards, specifications, and schedules set forth by the Branch Chief in any modifications to this Order.

35. NCP Compliance. All work Respondent properly performs to comply with this Order shall be consistent with the National Contingency Plan.

36. Within three (3) days of the Effective Date of this Order, Respondent shall provide EPA with documentation that adequately demonstrates its financial ability to complete the work to be performed pursuant to this Order. Examples of adequate financial

documentation that EPA may accept include, but are not limited to, a signed contract or guarantee on the part of the Respondent's contractor that it will complete the work to be performed, a letter of credit from a financial institution, or an escrow account for work to be performed. Respondent shall demonstrate financial assurance in an amount no less than \$500,000.00.

37. Selection of Contractor(s) and Subcontractor(s). All work performed by or on behalf of Respondent pursuant to this Order shall be performed by qualified individuals or contractors with expertise in hazardous waste site investigation or remediation, unless agreed otherwise by EPA. Respondent shall, within three (3) days after the Effective Date of this Order, notify EPA in writing of the name, title and qualifications of the individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of any contractor(s) or subcontractor(s). The qualifications of the persons, contractors, and subcontractors undertaking the work for Respondent shall be subject to EPA review and approval.
38. If EPA disapproves of any person's or contractor's technical or work-experience qualifications, EPA will notify the Respondent in writing. Respondent shall, within five (5) working days of Respondent's receipt of EPA's written notice, notify EPA of the identity and qualifications of the replacement(s). Should EPA disapprove of the proposed replacement(s), Respondent shall be deemed to have failed to comply with the Order.
39. Respondent may propose to change the individual(s), contractor(s), or subcontractor(s) retained to direct and supervise the work required by this Order. If Respondent wishes to propose such a change, the Respondent shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s), proposed contractor(s), or proposed

subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to approval by EPA in accordance with the terms of Paragraphs 37 and 38, above. The naming of any replacement(s) by Respondent shall not extend any deadlines required by this Order nor relieve the Respondent of any of its obligations to perform the work required by this Order.

40. Respondent will notify EPA of its respective field activities at least forty-eight (48) hours before initiating them so that EPA may adequately schedule oversight tasks.
41. Respondent shall submit to EPA a certification that Respondent or its contractor(s) and subcontractor(s) have adequate insurance coverage or other ability, subject to approval of EPA, to compensate for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Adequate insurance shall include comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondent need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor. Respondent shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order.  
  
Respondent shall ensure that the United States is named as an additional insured on any such insurance policies.

42. General Provisions. All work required by this Order shall be conducted in accordance with: CERCLA; the NCP; EPA Region 9 "Guidance for Preparing Quality Assurance

Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by EPA; other applicable EPA guidance documents; any Work Plan or individual components approved pursuant to this Order; and any report, document or deliverable prepared by EPA because Respondent failed to comply with this Order.

43. All plans, schedules, and other reports that require EPA's approval and are required to be submitted by the Respondent pursuant to this Order shall, after approval by EPA, be automatically incorporated into and enforceable under this Order.
44. EPA will oversee Respondent's activities as specified in Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1). Respondent will support EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondent also shall cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the Site, including work performed by EPA, the State, or any other party performing work at the Site with the approval of EPA.
45. Respondent shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided under CERCLA or unless the Respondent obtains a variance or exemption from the appropriate governmental authority.

**X. NOTICE OF INTENT TO COMPLY**

46. Respondent shall, within one (1) working day of the Effective Date of this Order, provide written notice to EPA of Respondent's' irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order.

## **XI. OPPORTUNITY TO CONFER**

47. Respondent may, within one (1) day of receipt of this Order, request a conference with the Section Chief, Federal Facility Section, or whomever the Section Chief may designate. If requested, the conference shall occur within three (3) days of the request, unless extended by mutual agreement of the Parties, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.
48. At any conference held pursuant to Respondent's request, the Respondent may appear in person, or be represented by an attorney or other representative. If Respondent desires such a conference, the Respondent shall contact Letitia Moore, EPA Assistant Regional Counsel, at (415) 972-3928.
49. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the Response Action required by this Order and the extent to which Respondent intends to comply with this Order. If such a conference is held, the Respondent may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations on which the Order is based, the appropriateness of any action that the Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be



submitted in writing within three (3) days following the Effective Date of this Order.

Any such writing should be directed to Letitia Moore, at the following address:

Environmental Protection Agency  
75 Hawthorne Street, ORC-3  
San Francisco, CA 94105

50. Respondent is hereby placed on notice that EPA will take any action that may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and Respondent may be liable for the costs of those actions under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

## **XII. DESIGNATED PROJECT MANAGERS**

51. EPA designates Lewis Mitani, an employee of EPA Region 9, as its primary RPM and designated representative at the Site, who shall have the authorities, duties, and responsibilities vested by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order or undertake the Response Action (or portions of the Response Action) when conditions at the Site present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within three (3) days of the Effective Date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for overseeing Respondent's implementation of this Order. To the maximum extent possible, all oral communications between Respondent and EPA concerning the activities performed pursuant to this Order shall be directed through EPA's RPM and Respondent's Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 26, above.

52. EPA and Respondent may change their respective RPM and Project Coordinator. Notification of such a change shall be made by notifying the other party in writing at least five (5) days prior to the change, except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.
53. Consistent with the provisions of this Order, the EPA designates John Chesnutt as an alternate RPM, in the event Lewis Mitani is not present or is otherwise unavailable. During such times, John Chesnutt shall have the authority vested in the RPM by the NCP, as set forth in Paragraph 51 above.
54. The absence of the EPA RPM from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the EPA RPM under federal law.

### **XIII. REIMBURSEMENT OF OVERSIGHT COSTS**

55. Respondent shall reimburse EPA, on written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order, unless otherwise exempted from this requirement by federal law. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondent shall, within thirty (30) days of receipt of the bill, remit by cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

Hazardous Substance Superfund  
U.S. Environmental Protection Agency  
Cincinnati Accounting Operations  
Attention: Region 9 Superfund Receivables  
P.O. Box 371099M  
Pittsburgh, PA 15251

Respondent shall send a cover letter with any check and the letter shall identify the Pearl

Harbor Naval Complex—Oahu Sugar Site, Site No. 091S, and make reference to this Order, including the EPA docket number stated above. Respondent shall send simultaneously to the EPA RPM notification of any amount paid, including a photocopy of the check.

56. Interest at the rate established under Section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

#### **XIV. DELAY IN PERFORMANCE**

57. Any delay in the performance of any requirement of this Order that, in the EPA's sole judgment and discretion, is not properly justified by Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondent under the terms and conditions of this Order.
58. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's primary RPM within twenty-four (24) hours after Respondent first knew or should have known that a delay might occur. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, the Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or

expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

59. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondent's obligations under this Order.
60. If EPA determines that good cause exists for an extension of time, it may grant a request made by Respondent pursuant to Paragraph 59 above, and specify in writing to the Respondent the new schedule for completion of the activity or submission of the document for which the extension was requested.

#### **XV. ENFORCEMENT AND RESERVATIONS**

61. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or otherwise incurred at the Site and not reimbursed by Respondent. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
62. Notwithstanding any other provision of this Order, at any time during the Response Action, EPA may perform its own studies, complete the Response Action (or any portion of the Response Action) and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

63. Nothing in this Order shall preclude EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9607(a), et seq., or any other applicable law. Respondent may be liable under CERCLA Section 107(a) for the costs of any such additional actions.
64. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.
65. Notwithstanding compliance with the terms of this Order, including the completion of the EPA-approved Response Action, Respondent is not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by EPA.
66. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.
67. EPA expressly reserves all rights and defenses that it may have, including the EPA's right both to disapprove of work performed by Respondent and to request the Respondent to perform tasks in addition to those detailed in Section IX of this Order.
68. This Order does not release Respondent from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand that lawfully may be asserted by representatives of the United States, or the State.

69. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Order.

#### **XVI. SEVERABILITY**

70. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

#### **XVII. DISCLAIMER**

71. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States shall be held as a party to any contract entered into by Respondent, or its employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

#### **XVIII. PENALTIES FOR NONCOMPLIANCE**

72. Respondent is advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), that violation of this Order or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondent to a civil penalty of up to \$32,500 per day for each day in which such violation occurs, or such failure to comply continues. Failure to

comply with this Order, or any portion thereof, also may subject Respondent to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondent to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

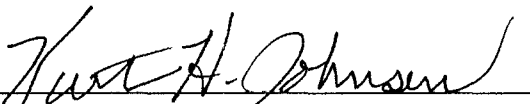
### **XIX. TERMINATION AND SATISFACTION**

73. The provisions of this Order shall be deemed satisfied on Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that all of the terms of this Order, including any additional tasks that EPA has determined to be necessary, have been completed.

IT IS SO ORDERED:

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

By:

  
Kathleen Johnson

Chief, Federal Facility and Site Assessment Branch  
EPA, Region 9

Date: 3-28-05

EPA Region 9 Contacts:

Lewis Mitani, Remedial Project Manager  
Superfund Division, SFD-8-3  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3032

Larry Bradfish, Assistant Regional Counsel  
Office of Regional Counsel, ORC-3  
EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3934

## **SCHEDULE**

### **Oahu Sugar Site Removal Action**

Within 21 days of Effective Date of UAO	Submit to EPA the Removal Action Work Plan (RAWP) & Quality Assurance Project Plan(QAPP)
Within 14 days of receipt of EPA comments on RAWP and QAPP	Submit to EPA the revised RAWP & QAPP with response to comments. RAWP is not final until approved by EPA
Within 14 days of receiving notice to proceed from EPA	Begin field work required by RAWP
48 hours prior to beginning field work	Written notification to EPA of start date for field work
Within 18 days of beginning field work	Complete all field work
Within 24 hours of completion of field work	Notify EPA of completion of field work
Within 21 days after completion of field work	Written notification to EPA whether a step-out is necessary. Notification shall include proposed schedule and sampling plan for next round of sampling. No additional sampling to be conducted until sampling plan approved by EPA.
Within 7 days of receiving EPA Comments on Step-Out Notice	Submit to EPA written response to Step-Out Notice comments and revised sampling plan.
Within 14 days of final EPA approval of Step-Out sampling plan	Begin Step-Out field work
48 hours prior to beginning Step-Out field work	Written notification to EPA of start date for Step-Out field work
Within 24 hours of completion of Step-Out field work	Notify EPA of completion of Step-Out field work



Within 30 days of completion of all field work

Submit Design Document with Site Characterization to EPA.  
Design/Characterization Report is not Final until approved by EPA

Within 14 days of receipt of EPA comments to the Design/Characterization Site Report

Submit to EPA the Revised Design/Characterization Report with Response to Comments. Report is not final until approved by EPA

Within 21 days of EPA approval of Design/Characterization Report

Begin Field Work

48 hours prior to beginning field work

Written notification to EPA of start date of field work

Within 18 days of beginning field work

Complete all field work

Within 24 hours of completion of field work

Notify EPA of completion of field work

Within 21 days of Completion of field work

Submit to EPA a Removal Action Completion Report (RACR). The RACR is not final until approved by EPA.

Within 21 days of receipt of EPA comments to the RACR

Submit to EPA a revised RACR with Response to Comments. The RACR is not final until approved by EPA.